

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOHN B. JACUZZI, SR.,
MARGARITA JACUZZI,
JOHN B. JACUZZI, JR.,
PATRICIA JACUZZI, AND
JAMES JACUZZI,

Plaintiffs,

V.

ENRIQUE PIMIENTA,

Defendant.

§ § § § § § § § § § § § § § § §

CIVIL CASE NO. 1:11-cv-00153

PLAINTIFFS' ORIGINAL ANSWER TO DEFENDANT'S COUNTERCLAIM

COME NOW, John B. Jacuzzi, Sr., Margarita Jacuzzi, John B. Jacuzzi, Jr., Patricia Jacuzzi, and James Jacuzzi (collectively referred to as the “Jacuzzi” or “Plaintiffs”), the Plaintiffs herein, and file the Plaintiffs’ Original Answer to Defendant Enrique Pimienta’s Counterclaim, and in support thereof respectfully shows the court as follows:

I. ORIGINAL ANSWER TO COUNTERCLAIM

1. With regard to Paragraph 33 of the Defendant's Counterclaim, Plaintiffs admit the allegations contained therein.
2. With regard to Paragraph 34 of the Defendant's Counterclaim, Plaintiffs admit that jurisdiction and venue are proper in this Court.
3. With regard to Paragraph 35 of the Defendant's Counterclaim, Plaintiffs admit that they are seeking a declaratory judgment that orders and a Final Judgment entered by the United States Bankruptcy Court for the Southern District of Texas are void for lack of due process and lack of personal jurisdiction. Plaintiffs further admit that Defendant obtained an

abstract of judgment that was filed against certain real property in Cameron County, Texas. Plaintiffs admit that James Jacuzzi and John B. Jacuzzi, Jr., own real property in Cameron County, Texas, but deny that any other Plaintiff owns property in Cameron County, Texas. To the extent an answer is required to the remaining allegations in Paragraph 35 of the Defendant's Counterclaim they are denied.

4. With regard to Paragraph 36 of the Defendant's Counterclaim, Plaintiffs deny that Defendant is entitled to the relief requested therein.

II. AFFIRMATIVE DEFENSES

5. Plaintiffs assert that the orders and judgment the Defendant seeks to enforce by way of its declaratory action are void for lack of due process and lack of personal jurisdiction.

6. Plaintiffs assert that the orders and judgment the Defendant seeks to enforce by way of its declaratory action are void because the United States Bankruptcy Court for the Southern District of Texas, did not have subject matter jurisdiction to enter them.

7. Plaintiffs assert that the entry of the orders and judgment the Defendant seeks to enforce violated the Plaintiffs constitutional right to have such issues tried before an Article III judge pursuant to recent U.S. Supreme Court authority, *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

8. Plaintiffs assert that the Defendant waived any defense of *res judicata* by seeking this Court's assistance in enforcing the void orders and judgment.

9. The orders and judgment the Defendant seeks to enforce should be set aside pursuant to Federal Rule of Civil Procedure 60(b) for lack of service, lack of due process, and lack of personal jurisdiction.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request that the Court deny the Defendant the relief sought in his Counterclaim and award the Jacuzzis such other and further relief to which they may show themselves entitled.

Respectfully submitted,

By: /s/ Richard A. Illmer
Richard A. Illmer
State Bar No. 10388350
Chad A. Johnson
State Bar No. 24026259

2001 Ross Avenue, Suite 2000
Dallas, Texas 75201
(214) 999-6100
(214) 999-6170 (*facsimile*)
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered to all counsel of record as shown below:

- _____ Mailed by certified mail, return receipt requested, postage prepaid, in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service.
- _____ Hand-delivered by courier receipted delivery.
- _____ Forwarded by next day receipted delivery service.
- _____ Communicated by telephonic document transfer to the recipient's current telecopier number.
- X Electronic Service via the Southern District of Texas Electronic Case Filing System (ECF).

TO:

Ron Armstrong
The Armstrong Firm, PLLC
110 Broadway, Suite 550
San Antonio, Texas 78205

on this 22nd September, 2011.

/s/ Richard A. Illmer
Richard A. Illmer